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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY 9 DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RAYMOND W. LONDON, on behalf of Himself and All Others Similarly Situated,

Plaintiff,

v.

NEW ALBERTSON'S, INC., CERBERUS CAPITAL MANAGEMENT (CALIFORNIA), LLC, and DOES 1 through 25, inclusive

Defendants.

Case No. '08 CV 1173 H CAB

NOTICE OF REMOVAL UNDER 28 U.S.C. §§ 1453 and 1332 (Class Action Fairness Act)

Complaint filed: May 29, 2008

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1453 and 1332, defendant Cerberus Capital Management (California), LLC ("Cerberus"), by and through its undersigned attorneys, hereby removes the above-captioned case pending in the Superior Court of the State of California, County of San Diego, to the United States District Court for the Southern District of California.[1] This Court has jurisdiction over this matter pursuant to 28

[1] By removing this matter, defendant Cerberus does not waive and expressly preserves any and all defenses it may have including, but not limited to, lack of personal jurisdiction and service of process.

U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005 ("CAFA"), and the claims may be removed to this Court under 28 U.S.C. § 1453.

As grounds for removal, defendant Cerberus avers as follows:

1. On May 29, 2008, plaintiff Raymond W. London ("Plaintiff") filed this putative state court class action (the "State Court Action") against New Albertson's, Inc. ("New Albertson's") and Cerberus (collectively, "Defendants") by filing a complaint entitled *London v. New Albertson's, Inc.*, No. 37-2008-00084792-CU-MC-CTL (the "Class Action Complaint"), in the Superior Court of California in and for the County of San Diego. A true and correct copy of the summons and complaint is attached hereto as Exhibit "A."

2. Pursuant to 28 U.S.C. § 1446(a) and (b), this Notice of Removal is being filed in the United States District Court for the Southern District of California within thirty days after June 6, 2008, *i.e.*, the date that defendant Cerberus received, through service or otherwise, a copy of the Summons and Complaint.

Class Action Fairness Act of 2005 ("CAFA")

3. Pursuant to 28 U.S.C. §§ 1332(d)(2) and 1453, a putative "class action" commenced after February 18, 2005 may be removed to the appropriate United States District Court if: (a) *any* member of the class is a citizen of a state different from *any* defendant; and (b) the amount in controversy exceeds the sum or value of $5,000,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2)(A).

4. CAFA is applicable to the State Court Action because the Action was commenced on or about May 29, 2008, *i.e.*, after the effective date of CAFA. 28 U.S.C. §§ 1332, 1453.

5. The State Court Action is a "class action" within the meaning of CAFA because Plaintiff seeks to represent a class of persons in a "civil action filed under" California Code of Civil Procedure § 382 and California Civil Code § 1781, *i.e.*, a "State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a).

6. The State Court Action satisfies CAFA's requirements and, accordingly, confers original jurisdiction upon this Court. First, the State Court Action satisfies CAFA's diversity of citizenship requirement. To establish diversity jurisdiction under CAFA, it is sufficient that any one member of the putative class is a citizen of a state different from any one defendant. 28 U.S.C. § 1332(d)(2)(A); *Abrego Abrego v. Dow Chemical Co.*, 443 F.3d 676, 681 (9th Cir. 2006) (CAFA "abandons complete diversity rule for covered class actions"). As alleged in the Complaint, Plaintiff is a citizen of the State of California. (Complaint ¶ 26.) Defendant New Albertson's is a corporate defendant that is a citizen of the State of Delaware (where, according to the Complaint, it is incorporated) and the State of Idaho (where, according to the Complaint, it has its principal place of business). (*Id.* ¶ 27.)

7. Cerberus Capital Management (California), LLC is a corporate defendant that is alleged to be a citizen of the State of Delaware (where it is incorporated) and the State of California (where it has its principal place of business). The named defendant entity, Cerberus Capital Management (California), LLC, does not maintain an ownership interest, or any other interest, in New Albertson's, and upon information and belief, was fraudulently joined in an effort to defeat *pre*-CAFA diversity jurisdiction.

8. The State Court Action also satisfies CAFA's amount in controversy requirement. Under 28 U.S.C. § 1332(d)(6), the amount in controversy in a putative class action is determined by aggregating the amount at issue in the claims of all members of a putative class. Here, on its face, the Class Action Complaint alleges an aggregate amount in controversy that exceeds $5,000,000, exclusive of interest and costs. Specifically, Plaintiff alleges that the class is comprised of

> All California residents who, as of the date of the commencement of this action and within the applicable limitations period(s), filled a prescription at or by a Albertson's, Sav-On Drugs, Osco Drugs, and Jewel Osco Drugs pharmacy and had their prescriptions information commercially sold, shared, or otherwise used by a database mining company that paid Defendants for such unauthorized disclosure.

(Complaint ¶ 32.) Plaintiff further concedes that there are "thousands of members of the proposed Class" (*Id.* ¶ 35) and that the damages sought by the Class consists of "statutory damages of at least $1000 per Class member," as well as compensatory and punitive damages relating to the alleged tortious conduct. (*Id.* ¶ 2.) Thus, to sum up, the putative Class consists of *every* single pharmacy customer, over a period of potentially several years (*i.e.*, based on the length of the statute of limitations for each of Plaintiff's claims), at literally hundreds or even thousands of Albertson's, Sav-On Drug, Osco Drug, or Jewel Osco pharmacies statewide, for which each Class member seeks damages in the amount of "at least $1000" plus other compensatory and punitive damages. While Cerberus denies that Plaintiff or any putative class member is entitled to recover any amount or the other relief sought, as against Cerberus, these allegations plainly make the aggregate amount in controversy in this State Court Action more than $5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Finally, lest there be any doubt that the amount in controversy exceeds $5,000,000, Cerberus respectfully refers the Court to the Declaration of Daniel Salemi concurrently filed in support of co-defendant New Albertson's Inc.'s Joinder In and Consent to Removal, which conclusively establishes this fact.

9. Plaintiff's allegation that the proposed class consists of "thousands of members" (Complaint ¶ 35) also satisfies CAFA's requirement that "the number of members of all proposed plaintiff classes in the aggregate" be at least 100. 28 U.S.C. § 1332(d)(5)(B).

10. Finally, unlike standard removal procedures under 28 U.S.C. § 1446, removal under CAFA does not require the consent of all defendants. 28 U.S.C. § 1453(b); *Abrego*, 443 F.3d at 680 (CAFA "overrides the judge-created requirement that each defendant consent to removal"). Therefore, removal by Cerberus is proper here, regardless of whether co-defendant New Albertson's joins in, agrees, or consents to such removal. *Id.* Nevertheless, although it is not necessary for removal under CAFA, Cerberus has obtained the consent to removal of defendant New Albertson's, Inc. In this regard, Cerberus is advised that New Albertson's Inc. is concurrently filing its own Joinder In and Consent to Removal.

Other Procedural Requirements

11. In accordance with 28 U.S.C. § 1446(a), attached hereto as Exhibit "B" are file-stamped copies of all process, pleadings and orders served upon Cerberus in the State Court Action.

12. Cerberus will promptly serve a copy of the Notice of Removal on Plaintiff's counsel and file with the Clerk of the Superior Court of the State of California, County of San Diego,a Notice of Filing of Notice of Removal pursuant to 28 U.S.C. § 1446(d).

13. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

WHEREFORE, this action should proceed in the United States District Court for the Southern District of California, as an action properly removed thereto.

Dated: July 1, 2008

MILBANK TWEED HADLEY & McCLOY LLP

By Jason Baim /JW
Jerry L. Marks
Jason B. Baim

Attorneys for Defendant Cerberus Capital Management (California) LLC

LA1:#6382123

EXHIBIT A

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
CIVIL BUSINESS OFFICE 19
08 MAY 29 PM 4:46
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
NEW ALBERTSON'S, INC.; CERBERUS CAPITAL MANAGEMENT (CALIFORNIA), LLC, and DOES 1 through 25, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
RAYMOND W. LONDON, on behalf of Himself and All Others Similarly Situated

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego County Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2008-00084792-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jeffrey R. Krinsk, Esq. FINKELSTEIN & KRINSK
501 West Broadway, Suite 1250, San Diego, CA 92101 (619) 238-1333

DATE: *(Fecha)* MAY 29 2008 Clerk, by *(Secretario)* S. Dyson, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
American LegalNet, Inc. | www.USCourtForms.com

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Raymond W. London

CIVIL BUSINESS OFFICE 19
FILED
08 MAY 29 PM 4:46
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

RAYMOND W. LONDON, on behalf of Himself and All Others Similarly Situated, Plaintiff, v. NEW ALBERTSON'S, INC.; CERBERUS CAPITAL MANAGEMENT (CALIFORNIA), LLC, and DOES 1 through 25, inclusive, Defendants.	Case No. 37-2008-00084792-CU-MC-CTL CLASS ACTION COMPLAINT **(1) VIOLATION OF THE CONFIDENTIALITY OF MEDICAL INFORMATION ACT [Cal. Civ. C. §§56, *et seq.*];** **(2) BREACH OF UNILATERAL CONTRACT;** **(3) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;** **(4) SUPPRESSION OF FACT;** **(5) BREACH OF PRIVACY;** **(6) UNJUST ENRICHMENT;** **(7) TRESPASS TO PERSONALTY; AND** **(8) VIOLATION OF UNFAIR COMPETITION LAWS.** JURY TRIAL DEMANDED

I. INTRODUCTION

1. Plaintiff Raymond W. London ("Plaintiff" and/or "London") brings this Class action on behalf of himself as a consumer and prescription drug patient of New Albertson's, Inc. and Cerberus Capital Management (California) LLC ("Defendants") by their affiliated retail pharmacy stores operating in California under the trade names of "Albertsons", "Sav-On Drugs", "Osco Drugs", or "Jewel Osco Drugs" ("Albertsons' Pharmacies"), and on behalf of all similarly situated California resident prescription drug patients of said pharmacies. Plaintiff London has been directly injured by Defendants' practices and activities within the period of the applicable statute of limitations on each of the claims asserted herein. By his undersigned attorneys, Plaintiff alleges as to himself and his own actions, as set forth below, are based upon his personal knowledge. All other allegations are based upon information and belief pursuant to the investigation of counsel or admissions by the named Defendants in public filings, documents or otherwise.

2. Plaintiff London proceeds as the putative Class representative. At all time material Plaintiff was a prescription drug patient of Defendants at the Albertsons Pharmacies and lost money and property and suffered damage as a result of the Defendants' improper, unlawful, unfair and deceptive use of patient prescription information. London seeks equitable remedies as available under California law, statutory damages, and compensatory and punitive damages which he and other Class members are entitled to receive as a result of the Defendants' activities, described hereinafter, causing injury and damage to Plaintiff (and, *ergo*, the Class) including: (1) depriving Plaintiff and the Class of the exclusive use and control of his/her prescription information, personal property both valuable and saleable absent the value thereof being sold and proceeds retained by Defendants; (2) violation of the Confidentiality of Medical Information Act [Cal. Civ. Code §56, *et al.*] (the "CMIA"), providing for statutory damages of at least $1,000 per Class member; (3) compensatory and punitive damages as a result of Defendants' tortious conduct, including the improper, unauthorized sale of prescription information belonging to Defendants' patients; and (4) Albertsons' disregard of its representations and/or implied terms and conditions for serving its patients, as hereafter particularized.

///

II. NATURE OF THE ACTION

3. Plaintiff London brings this lawsuit against New Albertson's, Inc., and Cerberus Capital Management (California) LLC. ("New Albertson's" and "Cerberus," respectively, or, as indicated above, collectively the "Defendants"), as a representative/private attorney general lawsuit and as a Class action on behalf of himself and other similarly situated California residents that are prescription drug patients of the Defendants. As mentioned above, Defendants own, manage and operate the California retail pharmacy operations of those California licensed pharmacies carrying the trade names "Albertsons," "Sav-On-Drug," "Osco Drug," and "Jewel-Osco" (hereinafter "Albertsons Pharmacy").

4. Plaintiff London and the Class seek damages and other remedies resulting from the claims particularized herein against Defendants for violation of the CMIA, as well as damages and/or equitable relief based on the statutory and common law violations by Defendants asserted below arising out of the systematic, unlawful and wrongful activities of Defendants in selling Plaintiff and the Class members' prescription drug information to data mining companies that, in turn, sell it to pharmaceutical companies for marketing (and other minor purposes) not authorized or consented to by Plaintiff and the Class.

5. This action seeks to curtail Defendants' practice in California of selling, without patient consent, authorization or disclosure to Albertsons Pharmacy patients, their prescription information shared by the patient with an Albertsons Pharmacy pharmacist solely for the purpose of having his/her prescription filled in accordance with his/her doctor's (or other care givers) prescription.

6. Defendants' use of a patient's prescription drug information (without the patient's authorization, knowledge or consent) is part of the marketing campaign undertaken by pharmaceutical companies that use the resulting information to increase prescription drugs sales of their drug products. Pharmaceutical companies pay the data mining firms for patient prescription information in order to increase the sale of their drugs. Defendants sell Plaintiff and the Class members' prescription drug information in order to allow the data mining firms and, in turn, their pharmaceutical company clients to identify the prescription writing habits of doctor(s) (or other care

givers) and thereby enhance the pharmaceutical industries' marketing effectiveness in using huge cadres of representatives, called "detail men" or "detail women" who confront doctors at their places of business armed with the resulting prescription writing profile information and, invariably, use that information to reinforce prescription writing habits or alter their prescription writing regimen.

7. The Defendants' conduct is unlawful in California though central to the marketing of high cost, non-generic prescription drugs in much of the country. It is only through Defendants' agreement (directly or indirectly) with these data mining companies (such as IMS Health, Inc. ("IMS"), or Verispan, Inc. ("Verispan"), both prominent patient information "data mining" companies) that the patients' prescription drug information entrusted to an Albertsons Pharmacy is sold to facilitate the drug marketing programs of large pharmaceutical companies. This systematic practice is a highly profitable scheme for the Albertsons Pharmacies that has been continuously carried out by the Defendants within the applicable statute of limitations. It consists of (at least) the following sequence of wrongful acts and practices:

A. Patients like Plaintiff London provide their drug prescription containing their confidential prescription drug information to a pharmacist or pharmacy technician working at a retail Albertsons Pharmacy in order to have his/her prescription filled (or refilled).

B. This prescription information is valuable property belonging to the patient (evidenced by the payments Defendants routinely receive for this information from the data mining companies) that include personally identifiable medical information and, *inter alia*, the patient's name, address, telephone number, the medication he/she has been prescribed (for which there is an unique numerical national drug code (NDC)), and the prescribing physician number (for which there is also an unique FDA-sanctioned numerical identifier), the dosage and quantity of the prescribed drug, and the date the prescription was filled.

C. The information of the prescription is the property of the patient and not the property of Defendants. This patient's property should be maintained by Defendants as the law requires and not sold, in whole or part, as doing so is not authorized or consented to by the patient. Pharmacy patients do not expect their personal medical information to be used except for purposes allowed by law and the purpose of filling his/her prescription. The allowed by law purposes are, essentially, limited to processing health insurance and similar payment requirements, public health emergencies, or other narrow uses that exclude the commercial use by Defendants described herein. Defendants' prescription drug patients are never asked, and never authorize, the use of their prescription drug information in the way that occurs through Defendants' sale to data mining firms of this information for use in marketing by large pharmaceutical companies.

8. Defendants promote their access to Albertsons Pharmacies' patient prescription drug information, appreciating that pharmaceutical companies will pay to use that information to increase the sale of their patented drugs. Defendants thus enter into contracts with data mining companies that pay them for the patient prescription drug information contained in patient prescriptions that have been entrusted to their retail pharmacist for the purpose, and only the purpose, of filling a patient's prescription.

9. A lucrative market exits for the data identifying the prescribing practices of individual health care providers (called "prescription-identifiable data"). Defendants acquire prescription data in the ordinary course of their retail pharmacy business. Data mining companies (such as IMS and Verispan) purchase the prescription data from Defendants and have the information identifying individual patients removed before transmission by the data mining company to its pharmaceutical company clients after combining the remaining information with data allowing easy identification by the pharmaceutical company of the doctor prescriber. In selling the resulting data to purchasers, the data miners' biggest clients by far are large pharmaceutical companies that use the data to develop marketing plans targeted to specific prescribers.

10. Specifically, approximately 1.4 million licensed health care providers are authorized to write prescriptions in the United States for approximately 8,000 different pharmaceutical products in various forms, strengths, and doses. The prescriptions are filed by approximately 54,000 retail pharmacies and other licensed medical facilities throughout the United States. Retail pharmacies acquire prescription data during the regular course of business. For each prescription filled, a record is kept that includes the name of the patient, information identifying the prescribers, the name, dosage, and quantity of the prescribed drug, and the date the prescription was filled. At each Albertsons Pharmacy location, including those located in California, the patient's prescription data

is ultimately aggregated with data from other outlets and stored in a central database maintained, operated and controlled by Defendants prior to the data's sale.

11. Data mining firms like IMS and Verispan are the world's leading providers of information, research, and analysis to the pharmaceutical and health care industries. IMS is the largest business in the field. It purchases prescription information from approximately 100 different suppliers. Verispan is smaller and obtains its information from approximately thirty to forty suppliers. These two data mining firms collectively acquire and analyze data from billions of prescription transactions per year throughout the United States.

12. Data mining firms like IMS and Verispan purchase prescription information including prescriber-identifiable data from Defendants via the pharmacy outlets they own/control. To (ostensively) comply with California laws protecting patient privacy, Defendants allow data mining firms to install software on Albertsons' mainframe computer servers that captures and eventually collates patient prescription information as it is transferred to the data mining firms' computers. After patient information is "de-identified," a number is assigned to each de-identified patient that permits prescription information to be correlated for each patient but, *purportedly* does not allow the patient's identity to be determined. The prescription information, including prescription information processed by Defendants' California retail pharmacy stores, is thereafter transferred to the data mining firms' computers where it is combined to allow physician identification and is then made available for sale to pharmaceutical companies.

13. Elaborating on the prior paragraph, one way the data mining companies add value to Albertsons Pharmacy prescriber-identifiable data is to combine it with prescriber reference information. This allows the data mining companies to, among other things, match each prescription to the correct prescriber, identify and use the prescriber's correct name, and add his/her address, speciality, and other professional information about the prescriber to the prescription data. Prescriber reference files are created using information obtained from various sources, including the American Medical Association's ("AMA") Physician Masterfile. The AMA's Masterfile contains demographic, educational, certification, licensure, and speciality information for more than 800,000 active U.S. medical doctors and over 90 percent of osteopathic doctors. The data mining companies

use the patient prescription data in combination with the reference file data, to produce a variety of saleable patient de-identified databases.

14. The biggest end-clients by far for Albertsons Pharmacy patients' prescription information are large pharmaceutical companies. According to a 2005 report of a data mining company "[s]ales to the pharmaceutical industry accounted for substantially all of [IMS's] revenue in 2005, 2004 and 2003". In limited instances, however, the data miners also provide prescriber identifiable information to biotechnology firms, pharmaceutical distributors, government agencies, insurance companies, heath care groups, researchers, consulting organizations, the financial community, manufacturers of generic drugs, pharmacy benefit managers, and others, but this is only a small percentage of business compared to sales to pharmaceutical companies. The pharmaceutical companies commit vast resources to the marketing of prescription drugs. In 2000, the pharmaceutical industry spent approximately $15.7 billion on marketing, $4 billion of which was dedicated to direct-to-physician drug marketing strategies. More recent estimates suggest the industry currently spends between $25 billion and $30 billion per year on marketing. The large pharmaceutical companies spend roughly 30 percent of their revenues on promotion, marketing, and administration, while spending only approximately 13 percent on research and development. Pharmaceutical companies depend heavily on the direct to physician marketing resulting from Defendants' sale of prescriber identifiable information to market to doctors and other health care providers. The pharmaceutical companies' direct marketing practice that is most relevant to this lawsuit is their use of "detailing" to persuade individual health care providers to prescribe specific brand-name drugs.

15. Pharmaceutical detailing generally involves providing promotional information during face-to-face contact between pharmaceutical company sales representatives and health care providers. These sales representatives provide prescribers with both written and oral information about particular drugs in an effort to persuade them to prescribe the drug(s) being detailed. The company sales reps' also offer prescribers free samples that can then be distributed to patients at no charge and provide other inducements to prescribers and their staff. Because many prescribers are reluctant to meet with sales representatives, gifts, free meals, and similar inducements are frequently

offered to the targeted health care providers and their staffs in an effort to facilitate access and encourage receptivity to the pharmaceutical company representative's sales pitch for a given brand-name drug.

A. Promotional Information

Pharmaceutical companies strictly control the information that detailers are authorized to present on their behalf. Although sales representatives may provide prescribers with accurate information, misstatements and omissions occur. A 1995 study published in the Journal of the American Medical Association concluded that 11 percent of the in-person statements made to physicians by pharmaceutical sales representatives contradicted information that was readily available to them. Michael G. Ziegler, Pauline Lew, and Brian C. Singer, *The Accuracy of Drug Information From Pharmaceutical Sales Representatives*, 273 JAMA 1296-98 (1995).

B. Sampling

Product sampling is widely used in the direct to physician marketing of prescription drugs. Published reports estimate that the total annual retail value of sampled drugs exceeds $11 billion. Product sampling programs permit pharmaceutical company sales representatives to use sampled drugs as inducements to facilitate access to prescribers. They also promote sales by allowing prescribers to become familiar with the sampled drugs and by increasing the likelihood that patients will continue to request prescriptions for sampled drugs after their sample has been consumed.

C. Gifts, Meals and Other Inducements

Prescribers are often reluctant to meet with sales representatives. In an effort to overcome this reluctance, sales representatives provide health care providers and their staffs with gifts, free meals, and other similar inducements. In addition to facilitating access, such inducements help sales representatives build relationships with prescribers that can make them more receptive to the product information that sales representative provide.

D. Effectiveness of Detailing

Detailing is principally used only to market prescription drugs having patent protection. After the patents on a brand-name drug expire, competitors can obtain approval to sell generic bio equivalent versions of the drug. Generic drugs are generally substantially less expensive than their brand-name equivalents, and bio-equivalent generic drugs are equally effective for most patients. California law authorizes pharmacies to substitute a bioequivalent generic drug for a branded drug unless the prescriber specifies that the brand-name drug is not to be substituted. Accordingly, sales of brand-name drugs fall substantially after bio-equivalent generic drugs become available and detailing at that point is no longer seen as a cost-effective marketing technique. However, pharmaceutical companies continue to heavily market brand-name drugs as treatments for conditions that can also be treated with generic alternatives that are not bio-equivalent. For example, although depression can be treated for many patients with generic form of Prozac, several pharmaceutical companies also market different brand-name medications as a treatment for depression. Because brand-name medications are often substantially more expensive that bio-equivalent generic alternatives, those patients who achieve the same benefits from a non-bioequivalent generic medication can save money by substituting the non-bioequivalent generic medication for a branded alternative. In such situations, detailing can be an affective marketing technique for brand-name drugs. Detailing works by, among other things: (i) building name recognition among prescribers for the drug being detailed; (ii) providing information about the drug to prescribers in a form that is designed to be persuasive; (iii) providing inducements to providers consisting of free samples, gifts, and meals that facilitate access and foster relationships between the sales representatives and health care providers.

16. Pharmaceutical companies use prescriber-identifiable data of the type provided by Defendants for a number of purposes with the targeting of prescribers for detailing with a tailored message by far the most prominent. The process employed by pharmaceutical companies includes evaluating the effectiveness of detailing. Marketing is exponentially by far the most prevalent use of prescription data and the dynamic driving the Defendants' sale of prescription information to data mining firms.

A. Targeting

Pharmaceutical companies use prescriber-identifiable data to analyze the prescribing practices of specific health care providers. For example, pharmaceutical companies use prescriber-identifiable information when introducing new drugs to identify "early adopters" who have demonstrated by their past prescribing practices that they are disposed to prescribe new medications. They also use prescriber-identifiable data to identify health care providers who have recently changed their prescribing practices with respect to specific drugs, those who are prescribing large quantities of the drugs that the detailer is selling, and those who are prescribing competing drugs. Targeting health care providers in this manner enables pharmaceutical companies to efficiently allocate resources by providing samples to and detailing for those providers most likely to be responsive.

B. Tailoring

Pharmaceutical companies use prescriber-identifiable data to tailor their marketing messages to specific health care providers. For example, a sales representative might mention during a detailing session that the drug she is detailing does not have a specific side effect that is associated with a competing drug that the health care provider is currently prescribing and which the sales representatives would otherwise be unaware of.

C. Measuring the Effectiveness of Detailing

Prescriber-identifiable data is used to measure the effectiveness of detailing. Companies use the data to identify the ratio of brand-name to generic drugs prescribed by a given doctor, assess the success of or resistance of detailer visits, and measure the effectiveness of larger marketing campaigns and detail personnel. In this way, manufacturers adjust the marketing message that detailers bring to individual health care providers.

17. The overall effect of Defendants' practices relative to selling patient prescription information for use to create prescriber-identifiable data is, according to numerous health care advocates and legislature, an increase in prescription drug costs for patients, employers and the state Medi-Cal program. One state representative (not from California) recently testified at a hearing on this subject and compared the annual costs to Medicaid of a branded calcium channel blocker and a generic calcium channel blocker as a way to purportedly demonstrate a state's savings that occur if the sale of prescription information ceased. She claimed that a one-year supply of the branded drug (Dynacirc) would cost Medicaid $1,047, while a one-year supply of the purported equally effective generic drug (Verapamil) would cost only $162. The same representative also submitted

a short research paper written by Emily Clayton, a health care advocate for the California Public Interest Research Group (CALPIRG) (see Emily Clayton, *Tis Always The Season For Giving: A White Paper on the Practices and Problems of Pharmaceutical Detailing,* CALPIRG, Sept. 2004, available at http://calpirg.org/reports/TistheSeasonFor Giving04.pdf.). In the report, Clayton briefly explained that pharmaceutical companies purchase aggregated prescriber information from data mining companies and then use it "to specifically target their sales pitches when they meet with doctors." Based on Ms. Clayton's review of several other studies she concluded that detailing causes public mistrust of prescriber decisions, increased drug costs, and the provision of incomplete and/or misleading information to prescribers.

18. In chorus with the above, a representative of the Department of Health and Human Services ("DHHS") also recently discussed the large commercial market for prescriber-identifiable data, stating that commercial use of this information violates the prescribers' (*i.e.*, the doctors') "trade secrets." According to this representative, DHHS

> believes that these activities ultimately drive up the cost of prescription drugs and the cost of health care in the aggregate. . . .It would be hard for us to quantify what that impact might be, but I find it unlikely the drug companies are sending detail[ers] into doctors' offices for the purpose of selling doctors cheaper medication. In fact, I'm confident that, if you're a doctor, that one of the best ways to get a detailer into your office would be if you switched to prescribing a generic drug over a branded drug.

19. According to further testimony on this subject, some detailers use prescriber-identifiable information to put improper pressure on prescribers. One anecdote shared by a nurse practitioner speaking in favor of restricting pharmaceutical company access to patient prescription data highlighted the alleged problem as follows:

> For the past several months, a drug rep has been bringing coffee to our office on Tuesday mornings. We have never asked her to continue doing this since we have a coffee pot, and we routinely make coffee for our staff and our patients. But she does it anyway, which is very nice of her. She calls this "Two for Tuesday." The problem is that every week she also says to me, "If you don't write 2 more prescriptions for my brand today, I'm not going to be able to continue bringing coffee." I prescribe her drug when it is right for my patients. There are many times when it is not right.
>
> We feel pressure from her to prescribe her product even though we have never asked to bring coffee. This may sound like a small thing, but I feel that since she knows exactly how many prescriptions I write each week for her drug versus the competition, she is expecting a quid pro quo.

20. A similar anecdote is described in a January 2006 article in the New York Times. According to the article, a district manager for a pharmaceutical company sent an e-mail to detailers in which she stated that:

> [O]ur goal is 20 or more scripts per week for each territory. If you are not achieving this goal, ask yourself if those doctors that you have such great relationships with are being fair to you. Hold them accountable for all the time, samples, lunches, dinners, programs, and past preceptorships that you have provided or paid for and get the business!! You can do it!!

21. In accordance with the preceding paragraphs, not only are the Defendants' practices improperly providing information owned by pharmacy patients for the Defendants' exclusive profit, violating the implied agreement they maintain with their pharmacy patients, doing so by using false or incomplete representations, while violating applicable statutes, but an end to Defendants' improper practice would greatly benefit the immediate problem in this state of enormous, uncontrolled health care costs.

III. JURISDICTION AND VENUE

22. This court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, Bus. & Prof. Code § 17203, and Code of Civil Procedure § 382.

23. Venue is proper in this Court because a substantial or significant portion of the conduct complained of herein has occurred and occurs in this county as Defendants' retail pharmacies are prevalent and conduct business under the trade names "Albertsons," "Sav-On-Drug," "Osco Drug," and "Jewel-Osco." Similarly, the Defendants' business practices and wrongful acts have occurred and continue to occur in this county, and the adverse effects of Defendants' wrongful conduct has harmed and continue to harm the residents of San Diego County (and the remainder of the state).

24. Defendants actively participate in substantial business activities in California and this county and intentionally avail themselves of the advantages of doing business in California and this county. Defendants extensively market and advertise in California while soliciting and conducting their pharmacy operations throughout the state.

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25. The amount of individual compensatory damages, restitution or disgorgement, and *pro rata* share of any attorney fees and punitive damages awardable to Plaintiff London and each Class member pursuant to this action, is below the $75,000 jurisdictional requirement for the original filing of this action in the United States District Court pursuant to 28 U.S.C. §1332 or the removal of this action to the United States District Court pursuant to 28 U.S.C. §1441./ / /

IV. THE PARTIES

26. Plaintiff London brings this action on behalf of himself and all other similarly situated California residents to force Defendants to halt their illegal and unfair business practices, establish the amounts owing to the members of the Class, either as restitution, disgorgement or monetary damages, under the theories of liability pled herein. Plaintiff London also seeks to end the practices of Defendants to prevent future misconduct relating to the sale of patient health/medical prescription information for the commercial purposes herein described. Albertsons' misconduct for which Defendants are liable under California law includes their paying statutory damages under the CMIA of not less than $1,000.00 per sale of each patients' prescription information. Plaintiff London is and at all relevant time has been a resident of California residing at Orange County, California. While a California consumer, Plaintiff London has been a persistent patient of Defendants (at Sav-On Drugs) and has been adversely affected and damaged in fact by the activities described herein. He brings this class action to gain the protection given California residents by the CMIA, Article I, Section 1, of the California Constitution (guaranteeing constitutional privacy), certain of California's statutory and common law rights prohibiting Defendants' business practices (in tort and contract) and prays that the Defendants be held liable per the above and for Defendants' trespass, breach of implied contract, negligence, breach of implied covenants accompanying Plaintiff London's implied contract with Defendants, suppression of fact, invasion of privacy and CMIA and UCL violations, each as elaborated herein.

27. At all times material, Boise, Idaho-based Defendant New Albertson's, Inc. was, and remains, a Delaware corporation that owns and operates (with defendant Cerberus) one of the largest combined retail grocery store and pharmacy chains in California, conducting business under the trade

names "Albertsons," "Sav-On-Drug," "Osco Drug," and "Jewel-Osco"; or combinations thereof.

28. At all times material, Defendant Cerberus Capital Management (California) LLC was, and remains a limited liability company formed under Delaware law with its principal headquarters located at 1601 Cloverfield Blvd., 2nd Floor, South Tower, Santa Monica, California.

29. Combined, Albertsons pharmacy operations generate over $30 billion in revenue nationwide and purports to employ over 8,000 licensed pharmacists for this purpose.

V. DEFENDANTS' REPRESENTATIONS CONCERNING MEDICAL RECORDS

30. At all relevant times Defendants effectively made material misrepresentations in the form of Albertsons brochures, pamphlets, and advertisements (and on the Albertson Pharmacy Internet web site) to Plaintiff and the Class regarding the degree to which patient prescription and medical records and information would be used only for limited purposes that included, or paralleled, the following:

> Albertsons (also known as Sav-on Drugs, Sav-on Pharmacy, Osco Drug, Jewel-Osco, Acme & Shaws) is committed to a responsible and innovative pharmacy practice allowing us to meet the health care needs of our patients. Pharmacy is the cornerstone of our business and will continue to grow to meet the needs of our patients.
>
> ***
>
> Albertsons pharmacy systems incorporate strict controls to protect the privacy of our patients personal health information by only allowing access to this information by the trusted health professionals in the pharmacy.
>
> ***
>
> Albertsons is committed to protecting your privacy and understands the importance of safeguarding your personal health information. We are required by federal law to maintain the privacy of health information that identifies you or that could be used to identify you (known as "Protected Health Information"). We also are required to provide you with this Notice, which explains our legal duties and privacy practices with respect to Protected Health Information that we collect and maintain.
>
> ***
>
> USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION
>
> Routine Uses and Disclosures of Protected Health Information for Treatment, Payment, or Health Care Operations
>
> Albertsons is permitted under federal law to use and disclose Protected Health Information without your specific permission for three types of routine purposes: treatment, payment, and health care operations.

***

Treatment. Your Protected Health Information can be used and disclosed by Albertsons for treatment purposes. For example, your Protected Health Information will be used by our pharmacists to fill your prescription and to counsel you about the appropriate use of your medication.

***

Health Care Operations: Your Protected Health Information can be used and disclosed to allow us to conduct health care operations, which generally are the administrative activities that we undertake in order to operate our pharmacies. For example, we may use your Protected Health Information to evaluate the performance of our pharmacists and to engage in other quality assurance activities.

***

Other Restrictions on Uses and Disclosures of Protected Health Information

The uses and disclosures of your Protected Health Information described above are permitted or required by federal law. Some states have laws that require additional privacy safeguards above and beyond the federal requirements. Thus, if a state law is more restrictive regarding uses and disclosures of your Protected Health Information or provides you with greater rights with respect to your Protected Health Information, Albertsons will comply with the state law. If your state has enacted a more stringent law, we have attached as an addendum to this Notice our privacy practices regarding your Protected Health Information in that state.

***

Other uses and disclosures of your Protected Health Information, not described above, will be made only with your written authorization. You may revoke this authorization at any time, in writing, except to the extent that we have taken action in reliance on the authorization.

***

Our responsibilities
This Pharmacy is required by law to:
Maintain the privacy of your health information

31. In addition to Albertsons' exemplar representations set forth in the preceding paragraphs, substantial additional material representations were made by Albertsons as its obligation to its pharmacy patients during the class period that failed to disclose Defendants sale or similar use of patient prescription information and/or its use in the sale of prescription identifiable data.

VI. CLASS ACTION ALLEGATIONS

32. Plaintiff London brings this representative action on behalf of himself and on behalf of all other similarly situated California-resident Albertsons pharmacy patients that had a prescription(s) filled at or by an ALbertson pharmacy that sold, in whole or part, the prescription information. The proposed Class which Plaintiff London seeks to represent is more specifically defined as:

> All California residents who, as of the date of the commencement of this action and within the applicable limitations period(s), filled a prescription at or by an Albertsons, Sav-On Drug, Osco Drug, or Jewel Osco pharmacy and had their prescriptions information commercially sold, shared, or otherwise used by a database mining company that paid Defendants for such unauthorized disclosure.

33. Excluded from the Class are the Defendants, their predecessors, parents, subsidiaries, and affiliated entities; any entity in which any of them has a controlling interest; any employees, officers or directors of any of them; and any of their legal representatives, heirs, successors and assignees.

34. This action may properly be maintained as a Class action pursuant to Cal. Code of Civil Proc. § 382 and Cal. Civil Code § 1781.

35. The members of the Class are so numerous that joinder of their individual claims is impracticable. Plaintiff London is informed and believes, and on that basis alleges, that there are thousands of members of the proposed Class. The precise number of Class members and their addresses are presently unknown to Plaintiff London, but can be easily obtained from Defendants' files and records. Further, Class members can be notified of the pendency of this action by published and/or mailed notice and the process is not difficult or complicated.

36. Common questions of law and fact exist as to all members of the Class. These questions predominate over questions affecting only individual Class members. These common legal and factual questions include, but are not limited to:

(a) Whether Defendants are liable for their activities in accordance with the CMIA and the amount of statutory damage thus owing;

(b) Whether Defendants are liable for violating privacy rights including informational privacy and the amount of damages;

(c) Whether Defendants breached their implied-in-fact contract with their pharmacy patients;

(d) Whether Defendants are liable for false and misleading advertising based on their communications and course of dealings with Albertsons Pharmacy patients;

(e) Whether Defendants' activities in selling a patient's prescription drug information is a violation of California law and/or operates as a fraud or deceit on the Class, and is susceptible to Class treatment and, if so, the liability Defendants;

(f) Whether Defendants were obligated to but failed to act as a quasi-fiduciary to members of the Class;

(g) Whether Defendants are liable for suppression of fact to Plaintiff London and the Class;

(h) Whether Defendants have acted in breach of the implied covenant of good faith and fair dealing;

(i) The nature and extent of damages, equitable and other remedies to which Plaintiff London and the other members of the Class are entitled; and

(j) Have the Defendants been unjustly enriched and, if so, the damages owed as a result.

37. Plaintiff London's claims are typical of the claims of the other members of the Class. London and each of the members of the putative Class provided Defendants with a prescription containing personal patient medical information that, without proper authorization or otherwise, was then shared, sold, or otherwise used in a manner providing significant profit/monies to Defendants.

38. Plaintiff London is an adequate representative of the Class because (a) his interests do not conflict with the interests of the individual members of the Class he seeks to represent; (b) he has retained counsel who are competent and experienced in complex Class action litigation; and (c) he intends to prosecute this action vigorously. The interests of the members of the Class will be fairly and adequately protected by London and his counsel.

39. Plaintiff London and the members of the Class have all sustained actual damage in that at the least each has lost money and property as a result of Defendants' conduct. Absent a Class action, Defendants will retain millions of dollars for selling information properly belonging to

Plaintiff London and respective members of the putative Class. Absent a Class action, each Class member will not receive suitable equitable relief and damages under, *inter alia,* the CMIA, and other statutes and will continue to be victims of Defendants' violation of law. No justification exists for Defendants being allowed to retain the proceeds resulting from its sale of prescription information of patient prescriptions to third party data mining companies.

40. The Class action device is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff London and the Class. The damages suffered by the Class members may be too small to warrant the filing of individual suits. Moreover, the issues raised by Defendants' conduct may be too complex to be efficiently and cost effectively resolved in individual litigation. Hence, this Class action is the best method for all the Class members' common claims to be adjudicated in a single proceeding.

41. Each individual Defendants was a direct participant and/or co-conspirator and/or joint tortfeasor and, or aider and abetter in the wrings alleged herein through their common ownership of and investment in the Albertsons pharmacy operations.

FIRST CAUSE OF ACTION

Violation Of The Confidentiality of Medical Information Act
California Civil Code §§56, *et seq.*
(Against All Defendants)

42. Plaintiff London incorporates by reference and realleges all paragraphs previously alleged herein.

43. The acts and practices of Defendants New Albertson's and Cerberus alleged in the Complaint constitute activities and practices that include the following:

A. Violation of the Confidentiality of Medical Information Act (CMIA"), Civil Code §§ 56, *et seq.* which, *inter alia,* at § 56.10, *et al.*, states:

> **Prohibition on Unauthorized Disclosure of Medical Information**
>
> (a) No provider of health care, health care service plan, or contractor[1] shall disclose medical information regarding a patient of the provider of

[1] Pharmacists and pharmacies are licensed pursuant to Chapter 9 of Division 2 of the Business and Professions Code and thus fall within the statutory definition relating to the regulation of health care set forth at CC §56.05(d). *See* Cal. Bus. & Prof. Code, §§ 4001, *et seq.*

> health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization. . . . (emphasis added)
>
> ***
>
> (d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.[2] (emphasis added)
>
> (e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer. (emphasis added)

44. At no time did New Albertson's or Cerberus solicit or receive the prior authorization or permission of its patients, Plaintiff and the Class though disclosing prescription information of the patients regarding a patient of a health care provider and, separately, Defendants share, sell or use patient medical information for purposes not reasonably necessary or related to the providing of treatment and/or health care services.

45. Plaintiff London, individually and on behalf of the Class, requests that the Court find Defendants liable for violations of the CMIA as set forth hereinabove, or otherwise finding Defendants' procedure for purportedly de-identifying "prescription information" does not insulate Defendants from liability pursuant to the CMIA and/or separately, that insufficiently or marginally de-identified medical information as marketed by Defendants violates the CMIA as a prohibited "use" pursuant to CMIA §56.10(d). In accordance with §§ 56.35 and/or § 56.36(b)(1), Plaintiff and the Class request that Defendants pay statutory damages of $1,000 for each sale by Defendants of a patient's information from his/her prescription.

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[2] Effective January 1, 2004, this paragraph was amended to include the words "use for marketing" to clarify prohibited uses of confidential medical information (*i.e.* (d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, **use for marketing**, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

SECOND CAUSE OF ACTION

Breach of Unilateral Contract(s)
(Against All Defendants)

46. Plaintiff London and the Class incorporate by reference and reallege paragraphs 1 through 40, inclusive, as though set forth at length herein.

47. At all relevant times a unilateral contract existed between Defendants and the Class members provided by at least, Defendants' express and implied representations that:

> Albertsons pharmacy systems incorporate strict controls to protect the privacy of our patients personal health information by only allowing access to this information by the trusted health professionals in the pharmacy.
>
> Albertsons is committed to protecting your privacy and understands the importance of safeguarding your personal health information. We are required by federal law to maintain the privacy of health information that identifies you or that could be used to identify you (known as "Protected Health Information").
>
> USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION
>
> Routine Uses and Disclosures of Protected Health Information for Treatment, Payment, or Health Care Operations
>
> Some states have laws that require additional privacy safeguards above and beyond the federal requirements. Thus, if a state law is more restrictive regarding uses and disclosures of your Protected Health Information or provides you with greater rights with respect to your Protected Health Information, Albertsons will comply with the state law.
>
> Other uses and disclosures of your Protected Health Information, not described above, will be made only with your written authorization.

48. Plaintiff and the Class, in consideration for the above promises in Defendants' Notice of Privacy Practices, and other express and implied promises made by Defendants, including but not limited to, promises that: Albertsons would not use Plaintiff and the Class members' confidential medical information for the marketing of drugs in exchange for payment; Plaintiff and Class member(s) individually identifiable medical information would not be shared, sold, used for marketing, or otherwise used or disclosed for purposes not necessary to providing health care services to Plaintiff and the Class; Plaintiff and the Class member(s) confidential medical information would be safeguarded as prescribed by regulation and statute, acted to reposit with Albertsons Pharmacies their individually identifiable medical information in the reasonable expectation and belief that such information would be safeguarded according to law, and otherwise

acted to forgo other alternatives for the filling of their prescriptions, including filling such prescriptions and repositing their individually identifiable medical information with other law abiding pharmacies.

49. Defendants breached the above promises to Plaintiff and the Class by: (a) allowing access to protected health information to persons and entities other than the "trusted health professionals" in Albertsons Pharmacies; (b) failing to comply with the relevant provisions of California law, including the CMIA, pharmacy regulations, and privacy laws pertaining to the safeguarding of confidential medical information; and (c) by selling Plaintiff and the Class' prescription information without written authorization from Plaintiff and the Class as represented by Defendants and required by the CMIA.

50. At all relevant times Plaintiff and Class members acted reasonably in their beliefs and expectations, that formed the parameters of the contract with Defendants and that was violated by the activities of Defendants as specified above because California law dictates, *inter alia*, that parties, like Albertsons Pharmacies, which are licensed to sell or work with products that are highly regulated by government agencies are deemed liable for noncompliance with the regulations applicable to the licensing process (for example, Vermont and 1101th Medical Arts Pharmacy v. Board of Pharmacy (1981) 125 Cal.App.3d 19), and Defendants' activities, complained of herein, failed to comply with the regulations (and the law) applicable to the California licensing process for pharmacies.

51. At all relevant times Plaintiff and the Class acted reasonably and uniformly in their beliefs and expectations forming the basis of their actions and forebearances in consideration for Defendants' promises as detailed above. In actuality, however, Defendants' activities and practices involving the sale and use of the Plaintiff and other members of the Class' confidential medical information breached their unilateral contract(s) with Plaintiff and the Class, and also constituted a violation of controlling regulations and laws prohibiting the conduct of Defendants in their pharmacy operations as complained of herein.

52. Additionally, California's Code of Pharmacy Regulations § 1764 (Title 16, Division 17) applies to Albertsons Pharmacies and directs that no California pharmacist is permitted to reveal the contents of any prescription or the nature of the illness of any patient or reveal any information

furnished by the doctor with any person other than the patient (or his/her authorized representative). Yet Defendants routinely transfer and disclose of the contents of Plaintiff and the Class members' prescription medical information to data mining companies like IMS and Verispan, their agents, representatives, contractors and sub-contractors, and other persons in violation of the referenced regulations and in breach of its promises to abide by California law.

53. Defendants breached their unilateral contract(s) with Plaintiff and the Class by failing and refusing to abide by the relevant provisions of the CMIA, California pharmacy regulations, and privacy law as complained of herein. Separately, Defendants breached those agreement(s) by committing the acts and practices alleged herein when Defendants misappropriated and misused the confidential medical information of Plaintiff and other Class members without their authorization for pecuniary gain. Plaintiff and each Class member, however, have performed all conditions required under the terms of the parties' unilateral contract, excepting those that have been waived or excused by operation of Defendants' breaches or misconduct.

54. Defendants' systematic breaches unilateral and uniform contract(s) with Plaintiff and other Class members has deprived them of the reasonable value and profits derived from Defendants' misappropriation and misuse of their individually identifiable medical information and prescription information for which the Plaintiff and the Class are entitled to recover as damages, in an amount to be established at trial according to proof.

THIRD CAUSE OF ACTION

Violation Of The Implied Covenant Of Good Faith And Fair Dealing (Against All Defendants)

55. Plaintiff London and the Class incorporate by reference and realleges paragraphs 1 through 40, inclusive, as though set forth at length herein.

56. It is well settled that in every contract there is an implied covenant that imposes upon each party as duty of good faith and fair dealing in its performance and its enforcement.

57. Contrary to the above requirement [and to the Restatement (Second) of Contracts § 205], Defendants breached their duty of good faith and fair dealing in the performance of the implied agreement by using the prescription information of Plaintiff and the Class for undisclosed

commercial advantage including receiving money properly belonging to Plaintiff and the Class, realized by Defendants as a result of their subterfuge and evasions.

58. Defendants acted to prevent, frustrate or impede plaintiff and the class from enjoying the rights and benefits to which he/she was entitled by virtue of the implied contract between Defendants and Plaintiff and the Class.

59. Plaintiff and the Class did all things required by the implied agreement with Defendants and entrusted their prescription information to Albertsons Pharmacy personnel in the belief that Defendants would provide prescription services and that, *inter alia*, Defendants would not use his/her prescription information, in any manner in violation of the law and not "use" Plaintiff's and the Class members' prescription information for commercial gain other than as authorized by Plaintiff and the Class except to satisfy the prescribers direction relative to the prescription and as required by law.

60. Defendants breached the covenant of good faith and fair dealing by, *inter alia*, acting as described above and in an objectively unreasonable fashion.

61. In acting in the manners described herein, Defendants violated the implied covenant of good faith in satisfying Defendants' contractual commitments to Plaintiff and the Class and violated the terms and conditions of Defendants through their activities with Plaintiff and the Class. Plaintiff has incurred damages as a result of Defendants' breaches of the implied covenant of good faith and fair dealing attaching to their contractual obligations.

FOURTH CAUSE OF ACTION

Suppression of Fact
(Against All Defendants)

62. Plaintiff London and the Class incorporate by reference and reallege paragraphs 1 through 40, inclusive, as though set forth at length herein.

63. Defendants failed to disclose material facts required to be provided London and members of the Class by virtue of the special relationship between Defendants' pharmacies and their patients. This duty emanates from the trust and confidence reasonably placed by Plaintiff London and the Class in Defendants and, more specifically, their licensed pharmacists at Albertsons Pharmacies.

64. Defendants have a duty to reveal the entire truth of its activities and practices once communications are provided to Plaintiff London and the Class regarding the uses by Defendants of patient prescription information.

65. In fact, Defendants suppress or conceal the true facts and fail to disclose, *inter alia*:

a) That patient prescription information will be used as detailed herein;

b) That Defendants receive funds and monies for prescription drug information belonging to Albertsons' patients;

c) That Defendants will not reveal the existence or share the financial benefit thus received for unauthorized use of patient prescription information.

66. The Defendants acted untruthfully and suppressed facts causing damage to Plaintiff London and the Class justifying the payment of punitive damages.

FIFTH CAUSE OF ACTION

Breach of Privacy
(Against All Defendants)

67. Plaintiff London and the Class incorporate by reference and reallege paragraphs 1 through 40, inclusive, as though set forth at length herein.

68. At all relevant times, Plaintiff London and the Class members had a legally protected privacy interest as directed by the California Supreme Court in Hill v. National Collegiate Athletic Ass'n (1994) 7 Cal.4th 1.

69. Plaintiff London and the Class acted reasonably in expecting that their prescription information collected for the purpose of filling his/her prescription would not then be data-based and used for another purpose without suitable knowledge or consent.

70. The conduct of Defendants was highly offensive and unreasonable and deprived Plaintiff London and the Class of the value of his/her property interest. Plaintiff London and the Class acted at all times consistent with their expectation that their privacy interest would be protected.

71. Defendants intentionally allowed and encouraged the stockpiling of private prescription information for one purpose while using said prescription information for another purpose.

72. Defendants are accordingly liable for violations of constitutional privacy and, given Defendants' deception, properly subject to punitive damages.

SIXTH CAUSE OF ACTION

Unjust Enrichment
(Against All Defendants)

73. Plaintiff London and the Class incorporate by reference and reallege paragraphs 1 through 40, inclusive, as though set forth at length herein.

74. The use and sale of the pharmacy records and prescription information of Plaintiff and other Albertsons Pharmacy patients by Defendants without first obtaining the express authorization of Plaintiff and each member of the Class violates Cal. Civil Code § 56.10(a), (d) and (e) and in breach of Defendants' fiduciary and other duties owing to Plaintiff and members of the Class.

75. Accordingly, and by virtue of the above allegations and claims asserted herein, Plaintiff on behalf of himself and in his representative capacity, seeks an order of this Court preliminarily and permanently enjoining Defendants from further using and selling their patients' confidential medical information as alleged herein. Plaintiff also seeks an order requiring each Defendant to:

a. Immediately cease its unlawful acts and practices;

b. Make full restitution of all monies wrongfully obtained; and

c. Disgorge all ill-gotten revenues and/or profits.

SEVENTH CAUSE OF ACTION

Trespass to Personalty
(Against All Defendants)

76. Plaintiff London and the Class incorporate by reference and reallege paragraphs 1 through 40, inclusive, as though set forth at length herein.

77. Defendants' activities as described by this complaint in the unauthorized use of the prescription information belonging to Plaintiff and the Class intentionally interferes with the possession of the personal property owned by Plaintiff and each Class member.

78. Defendants' activities were not authorized or permitted under the circumstances and proximately damaged Plaintiff and the Class members in that the value/benefit realized by

Defendants for their unauthorized and unpermitted use of such personalty could properly have been realized by Plaintiff and the Class if not prevented by Defendants activities. Defendants' use of Plaintiff and the Class members' prescription information diminished the value of their personal property interests through practices at no time authorized.

79. Plaintiff and the Class seek, *inter alia*, to enjoin Defendants' practices.

EIGHTH CAUSE OF ACTION

Violation of Unfair Competition Laws (Against All Defendants)

80. Plaintiff London and the Class incorporate by reference and reallege paragraphs 1 through 40, inclusive, as though set forth at length herein.

81. By engaging in the acts and practices disguised herein, Defendants have committed one or more unfair, deceptive and illegal business practices within the meaning of California Business and Professions Code §§17200, et seq.

82. Defendants' acts and practices alleged in the Complaint constitute a course of unfair, fraudulent and/or illegal business practices within the meaning of California Business and Professions Code §§17200 including, but not limited to, the following:

A. Violation of the California Constitution, Article I, Section 1, (protecting California residents' inalienable privacy rights);

B. Violation of the Confidentiality of Medical Information Act (CMIA"), Civil Code §§ 56, *et seq.*, which, *inter alia*, at § 56.10, *et al.*, states:

1. **Prohibition on Unauthorized Disclosure of Medical Information**

> (a) No provider of health care, health care service plan, or contractor[3] shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization. . . . (emphasis added)
>
> ***
>
> (d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no

[3] Pharmacists and pharmacies are licensed pursuant to Chapter 9 of Division 2 of the Business and Professions Code and thus fall within the statutory definition relating to the regulation of health care set forth at CC §56.05(d). *See* Cal. Bus. & Prof. Code, §§ 4001, *et seq.*

> provider of health care, health care service plan contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.[4] (emphasis added)
>
> (e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer. (emphasis added)

C. Violation of the Confidentiality of Medical Information Act, Civil Code §§56, *et seq.*, which, at §56.101 states:

> **Destruction of Medical Records**
>
> Every provider of health care, health care service plan, pharmaceutical company, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records shall do so in a manner that preserves the confidentiality of the information contained therein. . . .

D. Violation of § 4156 of California Business and Professions Code making it unlawful for a pharmacy corporation to engage in unprofessional conduct including failure to follow California Business and Professions Code §651;

E. Violating Code of Pharmacy Regulations § 1704 (Title 16, Division 17), to which states:

> **§ 1704: Unauthorized Disclosure of Prescriptions**
> No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient or his or her authorized representative, the prescriber or other licensed practitioner than caring for the patient, another licensed pharmacist

---

[4] Effective January 1, 2004, this paragraph was amended to include the words "use for marketing" to clarify prohibited uses of confidential medical information (*i.e.* (d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, **use for marketing**, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

serving the patient, or a person duly authorized by law to receive such information.

83. Defendants' acts and practices as alleged herein are unfair because the utility of the conduct is outweighed by the gravity of the harm it causes and because if offends established public policy or is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers. Defendants' wrongful conduct includes violation of numerous consumer laws and public protection as alleged herein or violates the spirit of these laws or otherwise significantly threatens or harms consumers. Defendants' wrongful conduct causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or to competition.

84. Pursuant to California Business & Professions Code §17203, Plaintiff London and the Class seek, *inter alia*, a temporary, preliminary and/or permanent order from this Court prohibiting Defendants from continuing to engage in the unlawful or unfair business acts or practices set forth in this Complaint.

85. Pursuant to California Business and Professions Code §17200 *et seq.*, Plaintiff London, individually and on behalf the general public and the Class, seeks restitution, disgorgement, injunctive relief and all other relief from Defendants as allowed under California Business and Professions Code §17200, *et seq*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff London prays for judgment against Defendants New Albertson's and Cerberus as follows:

1. For all declaratory and equitable relief reasonably available including enjoining Defendants from the further sale of prescription medical data and information;

2. For an order certifying a Class as deemed appropriate relative to the above causes of action;

3. Plaintiff seeks an order requiring that Defendants disgorge the full monetary benefit received as a result of any act or practice declared by this Court to be an unlawful, misleading, deceptive or unfair business act or practice;

4. Compensatory damages as permitted under the CLRA in an amount to be proven at trial, including any other damages provided for by statute;

5. Compensatory and statutory damages as permitted under the CMIA;

6. Treble damages pursuant to Civil Code § 3345;

7. Pre- and post-judgment interest;

8. For attorneys fees pursuant to, *inter alia*, the private Attorney General doctrine and/or Cal. Code Civ. Proc. § 1021.5 as may be appropriate, and for all costs of suit incurred herein; and

9. For such other and further relief as this Court may deem just and proper.

JURY REQUEST

Plaintiff hereby requests a trial by jury.

Dated: May 29th, 2008

FINKELSTEIN & KRINSK LLP

By: ______________________
Jeffrey R. Krinsk

Mark L. Knutson
William R. Restis
501 West Broadway, Suite 1250
San Diego, California 92101-3579

Attorneys for Class Plaintiff
Raymond W. London

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS:	330 West Broadway
MAILING ADDRESS:	330 West Broadway
CITY AND ZIP CODE:	San Diego, CA 92101
BRANCH NAME:	Central
TELEPHONE NUMBER:	(619) 685-6148
PLAINTIFF(S) / PETITIONER(S):	Raymond W London
DEFENDANT(S) / RESPONDENT(S):	New Albertson's Inc et.al.
LONDON VS. NEW ALBERTSON'S INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00084792-CU-MC-CTL

Judge: Richard E. L. Strauss Department: C-75

COMPLAINT/PETITION FILED: 05/29/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00084792-CU-MC-CTL CASE TITLE: London vs. New Albertson's Inc

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participant in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non- binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: $150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under $50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	
PLAINTIFF(S): Raymond W London	
DEFENDANT(S): New Albertson's Inc et.al.	
SHORT TITLE: LONDON VS. NEW ALBERTSON'S INC	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2008-00084792-CU-MC-CTL

Judge: Richard E. L. Strauss

Department: C-75

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- ☐ Court-Referred Mediation Program
- ☐ Private Neutral Evaluation
- ☐ Private Mini-Trial
- ☐ Private Summary Jury Trial
- ☐ Private Settlement Conference with Private Neutral
- ☐ Court-Ordered Nonbinding Arbitration
- ☐ Court-Ordered Binding Arbitration (Stipulated)
- ☐ Private Reference to General Referee
- ☐ Private Reference to Judge
- ☐ Private Binding Arbitration
- ☐ Other (specify): ______________________

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) ______________________

____

____

Alternate: (mediation & arbitration only) ______________________

Date: ______________________

Date: ______________________

____
Name of Plaintiff

____
Name of Defendant

____
Signature

____
Signature

____
Name of Plaintiff's Attorney

____
Name of Defendant's Attorney

____
Signature

____
Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 05/29/2008

____
JUDGE OF THE SUPERIOR COURT

Jeffrey R. Krinsk, Esq. (109234)
Mark L. Knutson, Esq. (131770)
William R. Restis, Esq. (246823)
FINKELSTEIN & KRINSK LLP
501 West Broadway, Suite 1250
San Diego, CA 92101-3593
Telephone: 619/238-1333

Attorneys for Class Plaintiff
Raymond W. London

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

RAYMOND W. LONDON, on behalf of Himself and All Others Similarly Situated, Plaintiff, v. NEW ALBERTSON'S, INC.; CERBERUS CAPITAL MANAGEMENT (CALIFORNIA), LLC, and DOES 1 through 25, inclusive, Defendants.	Civil Action No. 37-2008-00084792-CU-MC-CTL **NOTICE OF RELATED CASE**

Plaintiff Raymond W. London ("Plaintiff") by and through counsel, hereby states that this class action, filed May 29, 2008, is related to *Weisz v. Albertsons, Inc., et al* , SDGIC 830069 ("*Weisz Action*"). The representative and class action complaint in the *Weisz Action* was filed on May 17, 2004. The above titled action by Plaintiff London should be ordered related because they: (a) arise in pertinent part out of substantially similar happenings and events, that (b) require in pertinent part a determination of the same or substantially similar questions of law and/or fact, and (c) is likely to require substantial duplication of labor if heard by a different judge.

This action alleges that defendant New Albertson's, Inc. ("New Albertsons") and Cerberus Capital Management (California), LLC ("Cerberus") through their pharmacy operations sell patient prescription data without patient consent or authorization to companies (such as IMS Health, Inc., or Verispan, Inc.) that thereafter sell this information, belonging to the patients, to pharmaceutical companies in order to "detail" doctors or other drug prescribers. The *Weisz Action* similarly alleges that Albertsons, Inc. – the immediate predecessor to both New Albertsons and Cerberus – used, shared and sold prescription information for the purpose of a different though related drug marketing program.

The *Weisz Action* is before Judge Prager in Department 71. That action arises out of the same or closely parallel events and subject matter (and substantially similar parties) as the *Weisz Action* in alleging that Albertsons' pharmacy operations misuse patients' confidential medical information and, as such, coordination should avoid conflicts, conserve resources and promote efficient determinations of these actions.

Dated: May 30, 2008

FINKELSTEIN & KRINSK LLP

By: ____________________
Jeffrey R. Krinsk
Mark L. Knutson
William R. Restis
501 West Broadway, Suite 1250
San Diego, California 92101-3579

Attorneys for Class Plaintiff
Raymond W. London

SP079592

NCR NATIONAL CORPORATE RESEARCH, LTD.

Notice of Service of Process

Los Angeles, CA ~ Sacramento, CA ~ Dover, DE ~ Albany, NY ~ New York, NY

DATE: June 6, 2008

TO: Mark Neporent
Cerberus Capital Management, L.P.
299 Park Avenue
New York, NY 10171

SENT VIA:

☑ Federal Express
☐ Fascimile Transmission
☐ Other:

Tracking Number:
792711978189

RE: SERVICE OF PROCESS AGAINST:
CERBERUS CAPITAL MANAGEMENT (CALIFORNIA) LLC

The enclosed Service of Process was received by the statutory agent in: **California**
on the date of: **June 6, 2008**
sent via: **Personal Service**

TITLE OF ACTION: Raymond W. London vs. New Albertson's Inc. CERBERUS CAPITAL MANAGEMENT (CALIFORNIA) LLC

COURT AND CASE NO: Superior Court of teh State of California County of San Diego

Case No. 37-2008-00084792-CU-MC-CTL
Class Action Complaint

RESPONSE REQUIRED BY:

Sincerely,

Wayne Rafanelli

Wayne Rafanelli, Manager - Registered Agent Services

Please sign, date, and return the attached confirmation form using the enclosed addressed envelope.

523 West 6th Street, Suite 544, Los Angeles, California 90014 (213) 452-4470 (888) 600-9540 FAX (213) 452-4472
website: www.nationalcorp.com • e-mail address: info@nationalcorp.com

NATIONAL CORPORATE RESEARCH, LTD.
The Right Response at the Right Time, Every Time.

615 South DuPont Hwy, Dover, DE 19901 (800) 483-1140

SP079592

For NCR use only. Please do not write in this area

Date Recvd: ____________

Recvd By: ____________

DATE: June 6, 2008

TO: Mark Neporent
Cerberus Capital Management, L.P.
299 Park Avenue
New York, NY 10171

Confirmation of Receipt of Notice of Service of Process

RE: SERVICE OF PROCESS AGAINST:

CERBERUS CAPITAL MANAGEMENT (CALIFORNIA) LLC

The enclosed Service of Process was received by the statutory agent in: **California**

on the date of: **June 6, 2008**

sent via: **Personal Service**

TITLE OF ACTION: Raymond W. London vs. New Albertson's Inc. CERBERUS CAPITAL MANAGEMENT (CALIFORNIA) LLC

COURT AND CASE NO: Superior Court of teh State of California County of San Diego

Case No. 37-2008-00084792-CU-MC-CTL

Class Action Complaint

RESPONSE REQUIRED BY:

PLEASE SIGN, DATE, AND RETURN THIS CONFIRMATION SHEET TO NATIONAL CORPORATE RESEARCH USING THE ENCLOSED ADDRESSED ENVELOPE.

____________________________ ____________

Signature of Recipient Date

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

I. (a) PLAINTIFFS

RAYMOND W. LONDON, on behalf of Himself and All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Orange
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Finkelstein & Krinsk, LLP, 501 West Broadway, Suite 1250, San Diego, CA 92101-1333 (619) 238-1333

DEFENDANTS

NEW ALBERTSONS, INC., CERBERUS CAPITAL MANAGEMENT (CALIFORNIA), LLC, and DOES 1-25 incl.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

See Attachment

'08 CV 1173 H CAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 28 USC §§ 1453 & 1332

Brief description of cause: Removed under CAFA

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE July 1, 2008 SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # 152534 AMOUNT $350 APPLYING IFP JUDGE MAG. JUDGE

TAC 7/2/08

Attachment to Civil Case Cover Sheet

Defendants Attorneys:

Milbank, Tweed, Hadley & McCloy LLP
601 South Figueroa Street, 30th Floor
Los Angeles, California 90017
(213) 892-4000
Attorneys for Defendant,
Cerberus Capital Management (California), LLC

Dorsey & Whitney LLP
38 Technology Drive
Suite 100
Irvine, California 92618-5310
(949) 932-3600
Attorneys for Defendant,
New Albertson's, Inc.

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152534 - TC

July 02, 2008
11:55:07

Civ Fil Non-Pris
USAO #.: 08CV1124
Judge..: MARILYN L HUFF
Amount.: $350.00 CK
Check#.: BC63663

Total-> $350.00

FROM: RAYMOND W. LONDON
VS.
NEW ALBERTSON'S INC ET AL.